



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

(603) 271-2900 FAX (603) 271-2456



John Gagnon
256 Intervale Road
Canterbury, NH 03224

Carousel Homes, Inc.
105 Loudon Road
Concord, NH 03301

JC Northfield Properties, LLC
105 Loudon Road
Concord, NH 03301

Re: Wethersfield Development
Wethersfield Road, Northfield, NH

256 Intervale Road, Canterbury, NH

Carousel Estates
Bunker Hill Drive, Londonderry, NH

**ADMINISTRATIVE ORDER
No. WMD 01-06**

March 23, 2001

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Waste Management Division to John Gagnon, Carousel Homes, Inc., and JC Northfield Properties, LLC pursuant to RSA 149-M:15, I. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH 03301.
2. Carousel Homes, Inc. is a New Hampshire corporation having a mailing address of 105 Loudon Road, Concord, NH 03301.
3. JC Northfield Properties, LLC is a New Hampshire limited liability corporation having a mailing address of 105 Loudon Road, Concord, NH 03301.
4. John Gagnon is an individual having a mailing address of 256 Intervale Road, Canterbury, NH 03224.

C. STATEMENTS OF FACTS AND LAW

1. RSA 149-M authorizes DES to regulate the management of solid waste in the State of New Hampshire. RSA 149-M:7 authorizes the Commissioner of DES to adopt rules to implement solid waste management standards. Pursuant to this authority, the Commissioner has adopted Env-Wm 100-300 and Env-Wm 2100-3700 ("Solid Waste Rules").
2. John Gagnon and Carousel Homes, Inc. are the developers of land at Bunker Hill Drive, Londonderry, NH, more particularly described in a deed recorded in the Rockingham County Registry of Deeds at Book 3262, Page 823, and identified on Londonderry Tax Map 5 as Lots 31-16, 31-30, 31-31, and 31-34 ("Londonderry Sites").
3. JC Northfield Properties, LLC is the developer of land at Wethersfield Road, Northfield, NH, more particularly described in a deed recorded in the Merrimack County Registry of Deeds at Book 2118, Page 1729, and identified on Northfield Tax Map R15 as Lots 17, 18, 23 and 24 ("Northfield Sites").
4. John Gagnon and Lorna Gagnon are the owners of land at 256 Intervale Road, Canterbury, NH, more particularly described in a deed recorded in the Merrimack County Registry of Deeds at Book 2101, Page 275, and identified on Canterbury Tax Map 4.005 as Lot 001 ("Canterbury Site").
5. John Gagnon is the manager of JC Northfield Properties, LLC, and Carousel Homes, Inc.
6. RSA 149-M:4, XXII defines "solid waste" as "any matter consisting of putrescible material, refuse, residue from an air pollution control facility, and other discarded or abandoned material."
7. RSA 149-M:4, XXI defines "refuse in part, as "any waste product which is composed wholly or partly of such materials as brick, plaster or other waste resulting from the demolition, alteration, or construction of buildings or structures; or accumulated waste material, cans, containers, tires, junk, or other such substances which may become a nuisance."
8. Env-Wm 102.42 defines "construction and demolition debris" in part, as "non-putrescible waste building materials and rubble which is solid waste resulting from the construction, remodeling, repair or demolition of structures or roads. The term includes but is not limited to, bricks, concrete and other masonry materials, wood, wall coverings, plaster, dry wall, plumbing, fixtures, non-asbestos insulation or roofing shingles, asphaltic pavement, glass, plastics that are not sealed in a manner that conceals other wastes and electrical wiring and components, incidental to any of the above and containing no hazardous liquid or metals. The term does not include asbestos waste, garbage, corrugated container board, electrical fixtures containing hazardous liquids such as fluorescent light ballasts or transformers, furniture, appliances, tires, drums and containers, and fuel tanks."
9. On March 9, 2000, DES received a complaint from the Town of Londonderry regarding unpermitted solid waste activities, as well as illegal burning, at the Londonderry Sites.

10. On March 10, 2000, DES investigated the complaint by conducting an inspection ("March 10 Inspection") of the Londonderry Sites. The purpose of the inspection was to determine Carousel Home, Inc.'s compliance status relative to RSA 149-M and the Solid Waste Rules.

11. During the March 10 Inspection, DES personnel observed waste consisting of, but not limited to, asphalt shingles, insulation, 5-gallon plastic pails, drywall, cardboard, pressed board, duct work, carpet, metal bands, wooden spools, wire, and wood at the Londonderry Sites. This waste was located within 50 feet of a wetland area. The majority of the debris was located in a valley and gave the appearance of having been prepared for burial.

12. During the March 10 Inspection, DES personnel also observed that a hole had been prepared for the septic tank on Lot 31-16. DES personnel observed partially burned and unburned waste consisting of, but not limited to, cardboard, wood, and vinyl siding in the hole

13. The asphalt shingles, insulation, 5-gallon plastic pails, drywall, cardboard, pressed board, duct work, carpet, metal bands, wooden spools, wire, vinyl siding, and wood observed by DES personnel at the Londonderry Sites are solid wastes as defined by RSA 149-M:4, XXII.

14. On March 10, 2000, DES personnel met with John Gagnon at the Londonderry Sites. DES personnel informed Mr. Gagnon that the solid waste could not be burned or buried. DES personnel stressed to Mr. Gagnon that only clean wood could be burned.

15. RSA 149-M:4, IX defines a "facility" as "a location, system, or physical structure for the collection, separation, storage, transfer, processing, treatment or disposal of solid waste."

16. Each of the four lots that comprise the Londonderry Sites each constitutes a "facility" as defined by RSA 149-M:4, IX.

7. Env-Wm 102.116 defines "owner" as "a person who owns a facility or part of a facility.

18. John Gagnon is the owner of a facility.

19. RSA 149-M:9, I states that "No person shall construct, operate or initiate closure of a public or private facility without first obtaining a permit from [DES]."

20. A review of DES files show that neither John Gagnon nor Carousel Homes, Inc. has applied for or holds a permit to operate a solid waste facility at any New Hampshire location

21. As a result of the March 10 Inspection, a Report of Initial Complaint Investigation ("RICT") was issued to John Gagnon and Carousel Homes, Inc. advising them to cease operating an unpermitted solid waste facility, cease burning solid waste, and properly dispose of all solid waste located at the Londonderry Sites.

22. On April 20, 2000, DES personnel conducted a follow-up inspection (April 20 Inspection) of the Londonderry Sites. DES personnel observed that none of the solid waste at the Londonderry Sites had been removed and that additional waste had been brought to the Londonderry Sites. The additional waste brought to the Londonderry Sites consisted of, but was not limited to, wall board, cardboard, shingles, metal, insulation, vinyl siding, empty 5-gallon plastic containers, coated wire, and plastic.
23. During the April 20 Inspection, DES personnel also observed a large pile of dirt which contained partially buried insulation, 5-gallon plastic containers, cardboard, plastic house wrap, and metal.
24. By letter dated April 25, 2000, DES personnel reminded Mr. Gagnon to properly dispose of all solid waste at the Londonderry Sites to a permitted solid waste facility and to forward copies of disposal receipts to DES.
25. On May 17, 2000, DES personnel conducted a follow-up inspection of the Londonderry Sites. DES personnel observed that all solid waste had been removed from the Londonderry Sites.
26. On May 30, 2000, DES personnel received copies of disposal receipts from Mr. Gagnon on behalf of Carousel Homes, Inc. for the solid waste observed at the Londonderry Sites.
27. On December 4, 2000, DES received a complaint from the Tilton-Northfield Fire Chief ("Chief") regarding unpermitted solid waste activities, as well as illegal burning, at the Northfield Sites. The Chief informed DES that the Fire Department had responded to a fire at the Northfield Sites that day and observed solid waste consisting of, but not limited to, drywall, shingles, and other construction and demolition debris being burned in a hole at the Northfield Sites.
28. On December 5, 2000, DES personnel conducted an inspection ("December 5 Inspection") of the Northfield Sites.
29. During the December 5 Inspection, DES personnel were informed by a subcontractor, Premium Builders, that the developer, John Gagnon of JC Northfield Properties, LLC, had buried and burned construction and demolition debris at the Northfield Sites.
30. During the December 5 Inspection, DES personnel observed at the Northfield Sites scattered pieces of charred debris consisting of, but not limited to, drywall, shingles, and other construction and demolition debris on the ground surface. The hole where the Tilton-Northfield Fire Department representative said the wastes had been burned was filled in and graded. DES personnel also observed buried construction and demolition debris sticking out of the sides of the foundation hole on lot 18.
31. On December 7, 2000, DES personnel conducted a follow-up inspection ("December 7 Inspection") of the Northfield Sites. DES personnel observed a partially excavated pile of construction debris at Lot #18 in the wall of the foundation hole.

32. As a result of the December 7 Inspection, a RIC was issued to John Gagnon advising him to cease operating an unpermitted solid waste facility, cease transporting solid waste to an unpermitted solid waste facility, contact DES, Air Resources Division relative to the burning of solid waste, and arrange for test pitting to be conducted at the Northfield Sites.

33. On December 11, 2000, DES personnel received a telephone call from a worker at the Northfield Sites advising DES that Mr. Gagnon had removed construction and demolition debris from Lot #18 of the Northfield Sites and buried this debris on Lot #17 of the Northfield Sites. The worker also informed DES personnel that Mr. Gagnon had a large open burn hole at his personal property located at 256 Intervale Road, Canterbury, NH.

34. On December 11, 2000, DES personnel conducted an inspection of the Canterbury Site. DES personnel observed a hole which contained debris consisting of, but was not limited to, drywall, cardboard, insulation, pvc pipe, metal, and carpet pad. DES personnel also observed, partially buried on the right end of the hole, charred debris consisting of, but not limited to, wood, cardboard, drywall, and wire.

35. On December 11, 2000, DES personnel conducted a follow-up inspection ("December 11 Inspection") of the Northfield Sites. DES personnel learned from Mr. Gagnon that solid waste from Lot #18 had been dug up, removed, and properly disposed. Mr. Gagnon stated he shipped off three 15-yard loads and one 8-yard load of construction and demolition debris to a permitted solid waste facility.

36. During the December 11 Inspection, Mr. Gagnon dug four test pits on Lot #18. Solid waste was found in test pit #4. The waste consisted of wood, plastics, and plastic lids.

37. During the December 11 Inspection, Mr. Gagnon dug a test pit on Lot #17. The test pit contained wood (charred and uncharred), plastic, approximately one dozen plastic 5-gallon containers, plastic house wrap, particle board, and metal.

38. The dry wall, shingles, cardboard, insulation, pvc pipe, metal, wire, plastic, plastic house wrap, particle board, and carpet pad are solid wastes as defined by RSA 149-M:4, XXII.

39. A review of DES files show that neither John Gagnon nor Carousel Homes, Inc. has applied for or holds a permit to operate a solid waste facility at any New Hampshire location.

40. RSA 149-M:9, II states that It shall be unlawful to transport solid waste to, or dispose of solid waste at, any facility other than an approved facility.

41. During the December 11 Inspection, Mr. Gagnon informed DES personnel that solid waste was transported from Lot #23 and Lot #24, brought to Lot #18, and buried.

42. During the December 11 Inspection, Mr. Gagnon informed DES personnel that solid waste and ashes, previously buried on Lot #18, had been transported to and buried on Lot #17.

43. During the December 5 Inspection, December 7 Inspection, and the December 11 Inspection, DES personnel observed that solid waste from Lots 17, 18, 23, & 24 had not been properly disposed of at a permitted solid waste facility.

44. Env-Wm 2602.04(a) requires that ash be disposed only at authorized facilities.
45. During the December 11 Inspection, DES personnel learned from Mr. Gagnon that ash previously buried on Lot #18 had been unearthed and reburied on Lot #17.
46. The Northfield Sites are not permitted to accept ash.
47. Env-Wm 2702.02(e) specifies that facilities and practices shall not cause air pollution in violation of federal or state law, any air quality rules implemented by DES, the conditions of any air quality permit issued by DES, or the New Hampshire State Implementation Plan under the Clean Air Act.
48. Env-A 1001.03(c)(4), adopted by the Commissioner of DES, states that the following types of burning shall be permissible without authorization from DES: burning of untreated wood from the construction or demolition of a building, provided that such burning shall be done in an area which shall be specified and approved by officials having jurisdiction over open burning.
49. John Gagnon, Carousel Homes, Inc., and/or JC Northfield Properties, LLC burned solid waste which did not meet the criteria set forth in Env-A 1001.03(c)(4) at the Londonderry Sites, Northfield Sites, and Canterbury Site.

D. DETERMINATION OF VIOLATIONS

1. John Gagnon, Carousel Homes, Inc., and JC Northfield Properties, LLC have violated RSA 149-M:9, I by operating a solid waste facility without first obtaining a permit from DES.
2. John Gagnon, Carousel Homes, Inc., and JC Northfield Properties, LLC have violated RSA 149-M:9, II by transporting solid waste to an unpermitted solid waste facility.
3. John Gagnon, Carousel Homes, Inc., and JC Northfield Properties, LLC have violated RSA 149-M:9, II by disposing of solid waste at an unpermitted solid waste facility.
4. John Gagnon, Carousel Homes, Inc. and JC Northfield Properties, LLC have violated Env-Wm 2702.02(e) by burning construction and demolition debris other than as allowed by Env-A 1000.

E. ORDER

Based on the above findings, DES hereby orders Carousel as follows

1. **Immediately** cease operating an unpermitted solid waste facility.
2. **Immediately** cease transporting solid waste to an unpermitted facility.
3. **Immediately** cease disposing of solid waste at an unpermitted facility.
4. **Immediately** cease burning solid waste.

5. **Within 30 days** of this Order, submit to DES for approval a Scope of Work for the removal of all solid waste and ash at the Northfield and Canterbury Sites. Include as part of the Scope of Work a schedule which details when the work will be done.
6. Upon DES approval of the Scope of Work and proposed schedule, implement the Scope of Work as approved and complete the removal of all solid waste and ash at the Northfield Sites and Canterbury Site to a facility or facilities permitted to accept such wastes in accordance with the approved schedule.
7. **Within 7 days** of the disposal of the solid waste and ash, forward disposal receipts to DES.
8. Submit one written status report to DES **within 10 calendar days** of completing the approved Scope of Work certifying that corrective measures have been implemented in accordance with the approved Scope of Work and compliance achieved. Include in the report supporting documentation describing those measures taken to achieve compliance, copies of any written plans or proceedings developed.
9. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Cheryl McGary, Waste Management Specialist
DES Waste Management Division
6 Hazen Drive
Concord, NH 03301
Fax: (603) 271-2456
e-mail: cmcgary@des.state.nh.us

F. APPEAL


Any person aggrieved by this Order may appeal the Order to the Waste Management Council by filing an appeal that meets the requirements specified in Env-WMC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve Carousel of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 149-M provides for civil and criminal penalties and administrative fines for violations of the statute or any rule adopted by DES relative to the statute, as well as for violations of this Order. RSA 149-M:15 provides for civil forfeitures of up to \$25,000 for each day of a continuing violation, in addition to enforcement by injunctive relief. In the event that compliance is not achieved, DES may take further action against you, including referring the matter to the New Hampshire Department of Justice for imposition of civil or criminal penalties. DES reserves the right to pursue administrative penalties for the violations noted above.

By copy of this Order, this matter is being referred to the DES Air Resources Division, for investigation of possible violations of RSA 125-C.

This Order is being recorded in the Merrimack County Registry of Deeds so as to run with the land, specifically the Northfield Sites, Lots 17 and 18, and the Canterbury Site.


COPY
Philip J. O'Brien, Ph.D., Director
Waste Management Division


COPY
Robert W. Varney, Commissioner

Certified Mail/RRR: 7099 3400 0002 9769 9611

cc: Gretchen Rule, DES Enforcement Coordinator
Public Information Officer, DES PIP Office
NH AGO
Pamela Monroe, ARD
Town of Northfield
Town of Canterbury
Town of Londonderry
Merrimack County Registry of Deeds